COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones.	)	D.T.E. 03-63

REPLY COMMENTS OF VERIZON MASSACHUSETTS

The Department should approve the Interim Surcharge Proposal ("Joint Proposal") filed jointly by Verizon Massachusetts ("Verizon MA") and the Commonwealth of Massachusetts' Statewide Emergency Telecommunications Board ("SETB"). The Joint Proposal proposes an interim surcharge of $0.85 to allow recovery of prudently incurred costs associated with the provision of wireline enhanced 911 ("E911") service, dual party TDD/TTY message relay service, the equipment distribution program for people with disabilities, and amplified handsets at pay telephones. That interim surcharge is established pursuant to Chapter 239 of the Acts of 2002, Massachusetts General Laws c. 159, § 12(d), and the Department's proposed regulations (220 C.M.R. §§ 16.00 et seq.) in D.T.E. 03-24.

In accordance with the Department's proposed regulations, the Joint Proposal would implement the interim surcharge as a separate line item on wireline retail customer bills beginning in September 2003.[1] Department approval of that surcharge will enable SETB to

[1] The projected billing date presumes that a final Department decision is issued no later than July 15, 2003. It should be noted that this surcharge will apply only to wireline customers, not wireless carriers or subscribers. In D.T.E. 03-24, Verizon MA recognized that Mass. General Laws c. 6A, § 18H(a) provides a

obtain the revenues necessary to cover current E911, relay and other expenses, as well as a portion of the pre-existing deficit. This is critical because there has been no funding mechanism in place to provide for recovery of these ongoing E911 costs since the new law became effective.

While no party disputes the application of an interim surcharge, some parties dispute the level of the surcharge proposed by Verizon MA and SETB.[2] Contrary to those parties' claims, the proposed interim surcharge of $0.85 is a reasonable starting point that is fully supported by the projected cost data provided in the Joint Proposal.

The proposed surcharge also appropriately reflects the deficit that Verizon MA absorbed under the pre-existing E911 legislation. As demonstrated in the most recent annual tracking report filed June 20, 2003, Verizon MA has accrued a deficit of approximately $43 million (including interest) as of December 31, 2002. *See* Verizon MA's 12th Annual Tracking Report, at 1. This is based on the fact that since 1995, Verizon MA's residence directory assistance ("DA") revenues have been insufficient to cover the costs of E911 and the disability access programs. *See* Verizon MA's 12th Annual Tracking Report, at Att. 8.

Because of Verizon MA's declining residence DA revenue stream, that deficit will not be eliminated over the five-year planning period set forth in Chapter 239 of the Acts of 2002 *unless* a portion of that deficit is recovered via the new surcharge. Accordingly, the Department should adopt the Joint Proposal to set the interim surcharge at a level that, from the outset, will ensure

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separate funding mechanism for the provision of wireless E911 by wireless carriers. *See* D.T.E. 03-24, Verizon MA's Reply Comments, at 5-6. This addresses concerns raised by Sprint in this proceeding. Sprint Comments, at 4.

[2] The following parties filed comments regarding the Joint Proposal: the Office of the Attorney General ("Attorney General" or "AG"), Massachusetts Communications Supervisors Association ("MCSA"), AT&T Communications of New England, Inc. ("AT&T"); Sprint Communications Company L.P. ("Sprint"); Comcast Phone of Massachusetts ("Comcast Phone"); Broadview Networks, Inc. ("Broadview"); and Conversent Communications of Massachusetts LLC ("Conversent").

recovery of both the pre-existing deficit and the ongoing E911/Disability Access expenditures during the applicable time period.

I. ARGUMENT

A. Verizon MA and SETB Appropriately Developed the Proposed Interim Surcharge to Recover a Portion of the Pre-Existing Deficit.

It is clear that the new surcharge funding mechanism may be used to recover a portion of the pre-existing deficit associated with the provision of E911 and other services prior to January 1, 2003. Indeed, Massachusetts General Laws c. 6A, § 18H expressly provides that

> [t]he department of telecommunications and energy promulgate rules providing for the recovery by telecommunications companies of expenses that *have been*, are, or will be, until December 31, 2007, incurred that are associated with the services pursuant to sections 18A to 18F, inclusive of this chapter and sections 14A and 15E of chapter 166. With respect to any deficit incurred by the telephone companies before the effective date of this section, the department of telecommunications and energy shall determine the portion of directory assistance revenues that will be used to offset the deficit, including any interest the department may determine should apply.

G.L. c. 6A, § 18H (emphasis added). Likewise, the Department's proposed regulations recognize that "the surcharge may also recover a portion of the deficit associated with the provision of wireline enhanced 911, TDD/TTY relay, and adaptive equipment services, under the statutory funding mechanism previously provided for in M.G.L. c. 166, §15E." D.T.E. 03-24, Proposed Regulation, 220 C.M.R. § 16.03(4).

Although applicable law and the Department's proposed regulations provide for the recovery of a portion of the pre-existing deficit under the new surcharge mechanism, the Attorney General contends that Verizon MA should *not* be allowed to recover *any* portion of that deficit via the interim surcharge because the Department has not fully investigated the total deficit amount. AG Comments, at 2, 4. That argument is without merit.

Verizon MA's annual tracking reports filed in accordance with Department directives in D.T.E. 91-68 demonstrate a growing deficit since 1995, culminating in a total deficit amount of approximately $43 million, including interest, as of December 31, 2002. *See* Joint Proposal, Att. A, at 2; Verizon MA's 12th Annual Tracking Report, at 1; *D.P.U. 91-68 Order*, at 18-19 (1991). To defer recovery of *any* portion of that pre-existing deficit, as suggested by the Attorney General, is unreasonable and would grossly underestimate the overall costs to be recovered. While this may reduce the interim surcharge in the short term, it will inevitably lead to substantially greater increases in the surcharge in subsequent years to ensure total recovery of E911 and disability access program costs by December 31, 2007, as required by law.

Accordingly, the Department should reject the Attorney General's recommendation to remove the deficit amount entirely, and set an unreasonably low, monthly interim surcharge of $0.64 per line. AG Comments, at 3, 5. Rather, it is more prudent for the Department to approve Verizon MA's and SETB's proposed interim surcharge of $0.85, which recovers not only ongoing E911 expenses but also an appropriate portion of the pre-existing deficit, as quantified in the Company's annual tracking reports filed with the Department. This is a reasonable starting point, and may be adjusted based on subsequent Department review.

B. Contrary to Some Parties' Claims, the Deficit Amount Used to Calculate the Proposed Interim Surcharge Is Not Overstated.

Some parties claim that the deficit amount used in calculating Verizon MA's and SETB's proposed interim surcharge is overstated because it overlooks various revenue offsets.[3] AG Comments, at 2; AT&T Comments, at 2-3; Comcast Phone Comments, at 2; Sprint Comments, at 2-3. Those claims are unfounded and should be rejected by the Department.

[3] Sprint's concern that pending federal legislation relating to potential federal E911 funding may impact the implementation of an interim surcharge is erroneous.

In particular, the Attorney General contends that the deficit is overstated because the "calculation does not include any offset for directory assistance revenues Verizon receives from its customers." AG Comments, at 4. The Attorney General further claims that it "does not show how much money Verizon received from directory assistance revenues in 2002 or whether these funds were applied to the Company's outstanding deficit." Those allegations are incorrect.

The Joint Proposal fully explains how the pre-existing deficit was calculated and explicitly states that it was "reduced by the projected Verizon MA residence directory assistance revenues through December 31, 2007." *See* Joint Proposal, Att. A, at 2. Exhibit I attached hereto illustrates the DA revenue projections and deficit projections through year-end 2007. Those exhibits substantiate that "the surcharge will need to recover $31.2 million in order to fully recover the deficit over the five-year planning period." *See* Joint Proposal, Att. A, at 2. Therefore, the deficit is not overstated, as the Attorney General claims.

Likewise, AT&T's and Comcast Phone's claims that the deficit is overstated because it does not include other revenue sources is wrong. AT&T Comments, at 3-4; Comcast Phone Comments, at 2. Specifically, AT&T and Comcast Phone contend that the deficit should be offset by Verizon MA's tariffed E911 infrastructure charges billed to carriers. AT&T Comments, at 4; Comcast Phone Comments at 2. AT&T further claims that the deficit amount should be reduced by additional revenue that Verizon MA receives from competitive local exchange carriers ("CLECs") to "help defray E-911 expenses, in accordance with the terms of interconnection agreements."

As indicated in correspondence between the Department and Verizon MA, the Company only recently discovered that it had inadvertently neglected to bill carriers for their use of the Massachusetts E911 system pursuant to D.T.E. Tariff No. 17 (Part M, Sec 2.6.1. and 3.2.1) and

comparable terms of carrier interconnection agreements. Comcast Phone Comments, at 2. In fact, it was not until April 2003, that Verizon MA began back-billing carriers for E911 services[4] provided through December 31, 2002. It is, however, premature to adjust the pre-existing deficit to account for those back-billed charges as a revenue offset.

Verizon MA will track the back-billing amounts and apply the amount collected to offset the E911 expenses already incurred. This would lead to a reduction in the deficit and will be reported in the first annual report contemplated by the Department's proposed regulations. This would comply fully with the Department's proposed regulations, which provide for review of the interim surcharge and future adjustments to reflect actual expenses or account for other changes, as required. D.T.E. 03-24, Proposed Regulation, 220 C.M.R. § 16.03(5) & (6).

Finally, AT&T argues that payments made by carriers pursuant to Massachusetts General Laws c. 6A, § 18F should be included in computing the E911 deficit. AT&T Comments, at 4. Section 18F authorizes the secretary of public safety, upon consultation with the Department, to make an annual assessment against each telephone company, based on its intrastate operating revenues, to be credited to the General Fund administered by SETB. However, AT&T's argument is speculative since neither AT&T nor any other carrier has provided data showing that

[4] Several carriers, such as Comcast Phone, Broadview, and Conversent contend that Verizon MA should not be permitted to back-bill E911 infrastructure charges. Comcast Phone Comments, at 2-3; Broadview Comments, at 1-2; Conversent Comments, at 1-2. While the question of back-billing is not at issue in this proceeding, it is clear that Verizon MA is authorized to do so under its state tariffs and contract arrangements. As stated in Verizon MA's June 11, 2003, letter to the Department, D.T.E. Tariff No. 17 (Part A, Sec. 4.1.2.C) provides that "[i]n addition to the current month's charges, the monthly bill may also include previously unbilled charges or other billing adjustments."

In addition, contrary to AT&T's claims, there is no conflict under existing law with back-billing those charges since they apply to E911 services provided under tariff or contract up to December 31, 2002. AT&T Comments, at 4. This pre-dates the new surcharge funding mechanism, which became effective on January 1, 2003, and supplants prior arrangements for recovering ongoing E911 expenses. Thus, Verizon MA will not "double recover" E911 expenses, as AT&T incorrectly alleges.

they were assessed and paid such charges.[5] In fact, Verizon MA has received no such revenue from any carrier or SETB. On the other hand, Verizon MA has been assessed the charge each year and has included that charge in the expenses associated with the operation of E911. Accordingly, the Department should reject AT&T's claims.

C. There is No Need to Conduct a Second Independent Audit to Implement an Interim or Permanent E911 Surcharge.

AT&T's claims a second independent audit should be conducted to validate the amount of the pre-existing deficit. AT&T Comments, at 2-3. AT&T attempts to make much of the fact that the deficit is identified as $43 million in the Joint Proposal, but was estimated at $40 million in the Department's March 13, 2003, Order in D.T.E. 03-24. AT&T Comments, at 3. That argument is a red herring.

Verizon MA has amply supported its $43 million deficit in its recent annual DA tracking report. *See* Verizon MA's 12th Annual Tracking Report, at 1. In D.T.E. 91-68 the Department established an accounting methodology that was to be used to track DA revenues and E911 expenses. *D.P.U. 91-68 Order*, at 18-19 (1991). Verizon MA has followed that methodology in each of its annual tracking reports. Moreover, in 1998, the Department selected an independent auditor – the accounting firm of Deloitte & Touche to conduct an external audit. *See* Department Letter dated August 27, 1998, captioned "Residence Directory Assistance Audit RFP." In its 1999 audit report, the independent auditor found that the Company's accounting methodology and tracking of DA revenues and E911 expenses complied with the Department's requirements, and the reported amounts were accurately stated. *See* 1999 Audit Report, at 1.

[5] In fact, it is Verizon MA's understanding that SETB has not received nor billed any other carrier for this assessment.

It is clear from Verizon MA's annual tracking reports that the Company applied the same Department approved methodology in determining the deficit level. Accordingly, there is no need to conduct another audit of Verizon MA's accounting process for determining the E911 deficit. Such an audit would be duplicative, an unnecessary expense for customers and a waste of the Department's scarce resources.

D. The Attorney General's Elimination of Uncollectible Revenues and Projected E911 Capital Expenses in Recalculating the Interim Surcharge Is Unreasonable.

In recalculating the proposed interim surcharge from $0.85 to $0.64, the Attorney General not only excludes the pre-existing deficit, but also eliminates the uncollectible factor for the projected surcharge revenues. AG Comments, at 2-3. The Attorney General argues that "neither the Act nor the Department's proposed rules specifically permits recovery of carriers' E911 wireline bad debt expense." AG Comments, at 3 n.3. That argument is wrong.

The Department recognizes that telecommunications carriers will not collect 100 percent of their surcharge billings, and provides in its proposed regulations that carriers "only be obligated to remit the actual amount collected from subscribers to the SETB." D.T.E. 3-24, Proposed Regulation, 220 C.M.R. § 16.03(8). Even AT&T acknowledges that applying an uncollectible factor to the estimated surcharge revenues is appropriate here. AT&T Comments, at 4.

As explained in the Joint Proposal, the uncollectible revenues used in determining the interim surcharge are based on Verizon MA's actual experience in Massachusetts with uncollectible amounts for residence and business accounts. *See* Joint Proposal, at 3, and Att. A, at 3. Contrary to the Attorney General's claims, there is no basis for assuming a "zero" uncollectible factor. This would unquestionably overestimate the projected surcharge revenues - and grossly understate the surcharge level necessary to recover the projected E911 costs by

December 31, 2007. Accordingly, the Department should adopt the uncollectible factor contained in the Joint Proposal. Should the actual uncollectible surcharge revenues vary from the estimates, the Department can adjust the surcharge, if necessary. D.T.E. 3-24, Proposed Regulation, 220 C.M.R. § 16.03(6).

The Department should also reject the Attorney General's recalculation of the interim surcharge because it fails to consider capital expenditures required to upgrade the E911 system over the next five years. AG Comments, at 2-3. Although the Joint Proposal does not indicate any capital outlays in years 2003 and 2004, the proposed interim surcharge of $0.85 is developed based on the projected capital expenditures during the five-year planning period. Those expenditures, which total approximately $68 million, are spread out over a 52-month recovery period.[6] By contrast, the Attorney General defers recovery until the years in which the capital costs are actually incurred.

If adopted, the Attorney General's proposal would require a dramatic increase in the surcharge revenues from 2005 through 2007 to pay for the E911 capital investment and equipment upgrades made in those years. This is because the Attorney General has eliminated any recovery of those quantifiable capital expenditures in fiscal years 2003 and 2004 by reducing the interim surcharge to $0.64. The Department should reject the Attorney General's suggestion.

Rather than back-loading the cost recovery process, it is preferable to set the interim surcharge by spreading the capital costs over the entire 52-month period. This smooths out the rate impact and avoids creating a sudden spike in the surcharge, thereby minimizing the effect on

[6] For instance, the proposed interim surcharge of $0.85 is a function of the total E911 costs ($218 million, including, *inter alia*, the $68 million capital expenses), the number of access lines (5 million), and the 52 month recovery period. The result is an estimated monthly cost per access line of $0.824, which is rounded to a proposed interim monthly surcharge of $0.85. *See* Joint Proposal, at Exhibit 1.

customers. If necessary, the surcharge can be adjusted by the Department to the extent that the projected capital costs are subsequently modified or updated.[7]

E. The MCSA's Request to Include Additional Training and Other Costs Is Not A Matter for this Proceeding, But Rather an Issue to Be Determined by SETB.

Verizon MA applauds MCSA's support of the $0.85 interim surcharge proposed by the Company and SETB, and agrees with MCSA that the Department should approve that surcharge as soon as possible. MCSA Comments, at 2. However, in its comments, MSCA seeks Department approval of approximately $1.4 million in additional E911 expenditures associated with expanded E911 training and reverse 911 service, *inter alia*. MCSA Comments, at 4-6. That proposal is without merit.

As the Department previously recognized, SETB is solely responsible for decisions relating to capital expenditures and the related expenses of E911 programs. D.T.E. 03-24, Tr. A:6; *see e.g.*, G.L. c. 6A, § 18D. Likewise, SETB – not the Department is authorized to determine appropriate standards governing E911 training activities. 560 C.M.R. § 2.06(o)(2); D.T.E. 03-24, Verizon MA Reply Comments, at 7-9.

MSCA's comments seek to change that process by having the Department determine the nature and magnitude of ongoing, equipment related expenses or capital expenditures incurred by the E911 program and covered by the surcharge. MCSA Comments, at 4-6. This exceeds the Department's scope of authority under the law. Moreover, current law requires that the individual municipalities are responsible "for the staffing and operation of the public safety answering point terminal equipment provided to it in accordance with the terms and conditions

[7] This addresses Sprint's concerns regarding the estimated capital costs, which included PSAP equipment related expenses. Sprint Comments, at 5. It should be noted that Verizon MA and SETB have not included E911 wireless costs in those estimates, as Sprint mistakenly claims. Sprint Comments, at 5.

specified by" SETB. Acts of 1990, c. 291, § 8. Therefore, any personnel, staffing or additional training costs, including but not limited to travel and/or out-of-pocket expenses, should be borne by each city or town. Therefore, the Department must reject MCSA's argument to the extent it conflicts with applicable statutes and SETB's E911 standards in 560 C.M.R.

Moreover, a reverse 911 service, which enables outgoing calls by public safety agencies to telephone subscribers under general emergency conditions, is a completely different service from E911, and would require the deployment of certain software, other features and functions. Current Massachusetts law does not contemplate, nor provide a funding mechanism for establishing reverse 911 service.

II. CONCLUSION

The Department should approve Verizon MA's and SETB's proposed interim surcharge of $0.85. The surcharge is fully supported by historical and projected cost data and a detailed cost/revenue analysis and a reasonable starting point for recovering E911 and other service costs under the new statutory funding mechanism. It also reflects a portion of the pre-existing deficit, as contemplated by the new statute.

Contrary to parties' claims, there is no basis for reducing that interim surcharge by deferring recovery of the deficit or capital expenditures or excluding uncollectible revenues. The pre-existing deficit has been detailed in numerous annual tracking reports using a Department approved accounting methodology and filed with the Department, and is properly included in calculating the interim surcharge. Likewise, Verizon MA and SETB have substantiated the ongoing expenses for providing E911 and other services.

Finally, the Department should decline to consider additional expenditures proposed by MCSA and not included in the projected funding requirements presented by Verizon MA and

SETB in support of the proposed interim surcharge. The law does not provide for the Department to utilize the surcharge as a funding source to cover the broad range of additional expenses described in MCSA's comments, nor does it authorize the Department to make such funding decisions. That is SETB's role, and it remains unchanged under the new law.

Respectfully submitted,

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